

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-210339

DATE: April 13, 1983

MATTER OF: Daedalus Aviation

DIGEST:

1. Where agency's minimum need is for a new C-130H aircraft, and only a single firm can supply one, sole-source purchase from that firm is justified.
2. Agency's award of a sole-source contract before the expiration of the 5-day period promised in the Commerce Business Daily notice of the impending sole-source award for responses from firms interested in competing for the contract did not prejudice the protester, since the protester could not have met the agency's need.
3. GAO has no authority under the Freedom of Information Act to determine what information must be disclosed by other Government agencies.

Daedalus Aviation protests the Coast Guard's award of a sole-source contract to Lockheed-Georgia Corporation for a new C-130H aircraft, with associated data, training, and field service support, needed for the Coast Guard's search, rescue, and law enforcement activities in Alaska. Daedalus protests that the Coast Guard awarded the contract on December 23, 1982, even though a December 21 Commerce Business Daily (CBD) notice of the impending non-competitive award stated that the agency would consider any expressions of interest received within 5 days from publication of the notice. Daedalus apparently can supply used C-130 models, and complains that the Coast Guard did not consider whether the firm, which responded to the CBD notice, could meet the agency's needs, before awarding the contract to Lockheed.

We deny the protest.

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The aircraft and related materials were needed to replace a C-130H aircraft that crashed in Alaska in July 1982. The Coast Guard reports that it normally would purchase a new C-130H aircraft through the Air Force's multi-year contract with Lockheed, the only C-130 manufacturer. The Coast Guard states that it contacted Lockheed directly in September 1982, however, to determine whether any C-130Hs were available. Lockheed advised that it could sell the Coast Guard a new C-130H that had been contracted for by another buyer who had been unable to complete the purchase, at a discount (\$13.5 million instead of the \$16 million per aircraft paid under the Air Force contract) if the purchase were completed before the end of 1982.

On December 16, the contracting officer executed a determination and findings to support a sole-source contract with Lockheed for the aircraft. The justification was that Lockheed is the only manufacturer of C-130s, the new C-130H in issue was available immediately, and that failure to make the purchase would cause the Coast Guard to pay \$16 million under the Air Force contract and wait for delivery in late 1983.

The procurement was synopsisized in the CBD on December 21. The CBD notice stated that the sole-source solicitation would be issued on or before December 20, and the aircraft, identified only as a C-130 (as opposed to a new C-130H) would be delivered on December 30. The notice advised:

"* * * In the absence of responses from firms who have the capability to perform this requirement, the Procurement office plans to negotiate a contract with Lockheed Corp. on a non-competitive basis for the aircraft. This is not an RFP [request for proposals]. Your response will be considered when the RFP is issued. No other notice will be published until an award is made. Your response must be received within five days from date of publication of this notice."

Daedalus responded to the synopsis on December 22 by expressing interest in the purchase. The Coast Guard and Lockheed executed a contract on December 23, however, without first considering Daedalus' response. The firm then protested to our Office.

A sole-source award is proper where only one firm can meet the agency's need. See Rolm Intermountain Corporation, B-206327.4, December 22, 1982, 82-2 CPD 564. Here, the Coast Guard reports that its need actually was for a new, model "H" C-130 (although the agency apparently did not see the necessity to so specify in the document justifying the sole-source acquisition), since the aircraft had to be compatible with the new C-130Hs already on order from Lockheed under the Air Force contract. The agency admits that it unfortunately failed to specify in the CBD notice its need for a new C-130H, and that it neglected to wait the promised 5 days for expressions of interest. The agency states, however, that several days after the award to Lockheed it contacted Daedalus and determined that the firm only had model "A" C-130s available immediately. The Coast Guard argues that Daedalus therefore was not prejudiced by the actions complained of since the firm could not meet the Coast Guard's needs in any event.

Daedalus, which concedes that it could not have furnished a new C-130H (although it denies that it had only C-130As available), has given us no reason to question the Coast Guard's decision that its needs dictate a new C-130H rather than another C-130 model or a used aircraft. In this respect, the determination of the Government's minimum needs and the best method to accommodate them is primarily the responsibility of the contracting agency involved, since the agency is most familiar with the conditions under which supplies, equipment or services have been used in the past and how they will be used in the future. S.A.F.E. Export Corporation, B-207655, November 16, 1982, 82-2 CPD 445. We therefore will not question an agency's determination in that respect unless it is shown to be unreasonable. Philips Information Systems, Inc., B-208066, December 6, 1982, 82-2 CPD 506.

Daedalus does speculate that the purchased aircraft actually may be a used C-130H, in view of the generous sale price to the Coast Guard. Daedalus argues that in such case the Coast Guard either has misstated its need, or has purchased an aircraft that does not fulfill its requirement; Daedalus asserts that if either is the case, it should have been permitted to compete for the sale.

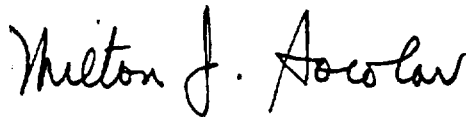
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The Coast Guard, however, states that the aircraft it purchased from Lockheed in fact is new. Daedalus' speculation does not suffice to carry the protester's burden to prove its case, See Mutual of Omaha Insurance Company, B-203338.2, September 24, 1982, 82-2 CPD 268.

Finally, Daedalus requests that our Office provide it certain information about the purchased aircraft's features, and the Lockheed/Coast Guard contract, pursuant to the Freedom of Information Act, 5 U.S.C. § 552 et seq. (1976). The information requested, however, is in the Coast Guard's possession, not this Office's, so that Daedalus should pursue disclosure under the Freedom of Information Act with that agency. In this regard, our Office has no authority under the statute to determine what information must be disclosed by other Government agencies. Claude E. Atkins Enterprises, Inc., B-205129, June 8, 1982, 82-1 CPD 553.

Under the circumstances, we find the Coast Guard's sole-source purchase from Lockheed was justified, since the agency could not secure the new C-130H it needed from any other source. Daedalus therefore was not prejudiced by the Coast Guard's failure to wait the 5 days promised in the CBD notice before awarding the contract. See Aydin Corporation, Vector Division, B-188729, September 6, 1977, 77-2 CPD 175.

The protest is denied.

for 
Comptroller General
of the United States